THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.4864 OF 2006

Dated: 13-03-2006

Between

M. Anjaneyulu, S/o. Bapaiah,

Occ: Agriculture, Sarpanch,

Mallavaram Gram Panchayat,

Mallavaram, R/o. Mallavaram,

Maddipadu Mandal, Prakasam

District.

...PETITIONER

AND

The District Collector, Ongole,

Prakasam District and others.

...RESPONDENTS

ORDER:

Petitioner questions the order of the District Collector (Panchayat Wing), Ongole dated 28.02.2006 made in proceedings Roc.No.2075/2005 (Pts) A1 in removing him from the office of the Sarpanch, Mallavaram Gram Panchayat, Maddipadu Mandal; in exercise of his powers under Section 249(1) of the Andhra Pradesh Panchayat Ray Act, 1994 (for short 'the Act').

Learned counsel for the petitioner submits that the order passed by the first respondent is

against the principles of natural justice,
as it is passed without giving any reasonable opportunity and without conducting any enquiry. He further submits the after receiving the show cause notice dated 12.01.2006 the petitioner filed an explanation on 25.01.2006 but without considering the same the impugned order has been passed.

To verify whether the petitioner filed an explanation to the show cause notice or not this Court wanted to admit the writ petition and call for the records and for the counter of the respondents but the learned counsel for the petitioner requested this Court that the writ petition itself may be disposed of at the admission stage as there is no point in admitting the writ petition and calling upon the respondents to file a counter.

Learned counsel for the petitioner further submits that even without considering the reply of the petitioner, the irregularities in respect of Charge Nos. 1 and 3 cannot be said to have been committed by the petitioner, as it is the duty of the Executive of the Gram Panchayat to produce the said records but not the Sarpanch of the Gram Panchayat.

On the other hand the learned Government Pleader for the respondents submits that Sarpanch is also the Executive Authority of the Gram Panchayat in addition to the Panchayat Secretary as per the amended rules and therefore, it is the duty of the petitioner also to produce the relevant records.

On a perusal of the show cause notice dated 12.01.2006, this Court feels it appropriate to extract the relevant portions of the said notice.

> "Accordingly, the Divisional Panchayat Officer, Ongole in his report 3rd cited, stated that he visited Mallavaram Gram Panchayat thrice on 29.09.2005, 13.10.2005 and 28.10.2005 in due course to enquire into the contents mentioned in the petition filed by
> Sri. M. Anjaneyulu and others, but the Sarpanch intentionally avoiding to attend the enquiry he suspects that huge amounts of Gram Panchayat funds were misappropriated by him. Therefore, he recommended to freeze the cheque drawing powers of the Sarpanch in the interest of public.

As such the drawal particulars are ascertained from the sub Treasury Officer, Ongole and releases of S.G.R.Y Funds are ascertained from Zilla Parishad, Ongole.

As seen from the records, the Sarpanch has committed the following irregularities in the administration of Gram Panchayat.

Irregularity No.1: "That he had drawn an amount of Rs.7,66,309/- from E.F.C/S.F.C/General Funds on various dates as shown in Annexure 1 and misappropriated them."

Irregularity No.2: "That he had drawn an amount of Rs.4.08,961/- from S.F.R.Y funds released from Zilla Parishad, Ongole as cash and Rice Components on various dates as shown in Annexure II and misappropriated them."

Irregularity No.3: "That he failed to produce the records before the Enquiry Officer and violated Section 44 of the A.P.P.R Act 1994"

Irregularity No.4: "That he failed to carry out the provisions of A.P.P.R. Act 1994 and misused his powers and functions."

It seems that the Sarpanch, Mallavaram Gram Panchayat has committed financial irregularity for an amount of Rs.11,15,270/- and misappropriated them. Thus, he misused his powers.

Therefore, under Section 249(1)(i,ii,iii,iv) of A.P.P.R. Act, 1994 Sri M. Anjaneyulu, Sarpanch, Mallavaram Gram Panchayat of Maddipadu Mandal is hereby show-caused as to why he shall not be removed from the O/o the Sarpanch Mallavaram Gram Panchayat for abusal of his powers and functions within 15 days from the date of receipt of Notice, failing which further action will be taken as per material available on record."

The petitioner does not state as to when he received the show cause notice and submitted his explanation. Therefore, the material available on record goes to show that the petitioner has not filed any explanation and accordingly, the following impugned order has been passed.

"Notification of the Collector (Pt. Wing) Ongole appended to the Proceedings Roc.No.2075/2005 (Pts)A1, dt:28-2-2006 of the Collector (Pt. Wing) Ongole.

* * *

1. Sri M.V. Raghavendra Rao of Mallavaram Find a petition before the Hon'ble Lokayukta, Hyderabad, alleging that the Sarpanch Mallavaram Gram Panchayat was misappropriating huge amounts of Funds, but no enquiry was conducted into the irregularities alleged against the Sarpanch and requested to direct the authorities to take action against him. The Lokayukta. A.P. Hyderabad registered the complaint No. as 1249/2005 and forwarded to the District Collector, Ongole for necessary action.

2. The Divisional Panchayat Officer, Ongole in his report Roc.no.334/2005, dt:10-11-2005 report that he visited Mallavaram Gram Panchayat thrice on 29-9-2005, 13-10-2005 and 28-5-2005 in due course to enquire into the contents mentioned in the petition filed, but the Sarpanch intentionally failed to attend the enquiry. A Show-Cause Notice was issued on 12-01-2006 to the Sarpanch giving an opportunity to account for the money he has drawn. But failed to submit his explanation. Again in another letter Dated 28-01-2006 he was directed to produce the records before the Divisional Panchayat Officer, Ongole on or before 1-02-2006, still he failed to produce the records, so all the amounts drawn by the Sarpanch are treated as misappropriation of funds.

3. As seen from the records and material available on record the Sarpanch, Mallavaram Gram Panchayat committed the following irregularities in the administration of the Gram Panchayat.

Irregularity No.1: "that he had drawn an amount of Rs.7,66,309/- from E.F.C/S.F.C/General Funds on various dates as shown in Annexure 1 and misappropriated them."

Irregularity No.2: "that he had drawn an amount of Rs.4.08,961/- from S.F.R.Y funds released from Zilla Parishad, Ongole as cash and Rice Components on various dates as shown in Annexure II and misappropriated them."

Irregularity No.3: "that he failed to produce the records before the Enquiry Officer and violated Section 44 of the A.P.P.R Act 1994"

Irregularity No.4: "that he failed to carry out the provisions of A.P.P.R. Act 1994 and misused his powers and functions."

4. It is evident from the above, that the Sarpanch misappropriated an amount of Rs.11,75,310/- of Gram Panchayat funds and Sri. M. Anjaneyulu, being the Sarpanch solely responsible for this misappropriation of public funds.

5. The above facts reveal that he willfully abused the powers vested in him as Sarpanch and custodian of the Gram Panchayat funds and deliberately misappropriated

them.

6. Now, therefore in exercise of the powers conferred by under Section 249(1) of A.P.P.R. Act, 1994, Sri M. Anjaneyulu, Sarpanch, Mallavaram Gram Panchayat is hereby removed from the O/o. the Sarpanch, Mallavaram Gram Panchayat."

Therefore, I am of the opinion that as per the material available in the material papers filed in the writ petition it cannot be said that no reasonable opportunity has been given to the petitioner and as the petitioner has not filed any explanation, there was no other go for the first respondent except to pass the impugned order for the reasons stated in it. However, there is an alternative remedy of right of appeal under Section 249(7) of the Act, available to the petitioner and for that reason the writ petition is not maintainable.

The writ petition is accordingly dismissed.

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V. ESWARAIAH, J

March 13, 2006

Note: Furnish C.C. of the order in two days

(**B/o**)

DSK